

Federal Energy Regulatory Commission

§ 385.1503

§ 385.1306 Intervention by State commissions (Rule 1306).

Any interested State commission may intervene in any proceeding before the Federal Energy Regulatory Commission, as provided in Rule 214.

Subpart N—Oil Pipeline Proceedings

AUTHORITY: Administrative Procedure Act, 5 U.S.C. 551-557; Department of Energy Organization Act, 42 U.S.C. 7101-7352, E.O. 12,009, 3 CFR 142 (1978); Interstate Commerce Act, 49 U.S.C. 1, *et seq.*

§ 385.1401 Applicability (Rule 1401).

(a) This subpart applies to oil pipeline proceedings.

(b) If any provision of this subpart is inconsistent with any provision of another subpart of this part, the provision of this subpart governs and the provision of the other subpart is inapplicable to the extent of the inconsistency.

[Order 312, 48 FR 29479, June 27, 1983]

§ 385.1402 Subscriber lists (Rule 1402).

(a) Not later than December 31 of each year, an oil pipeline must request, in writing, each of its subscribers and each person who has been served under any of its tariffs during the preceding twelve months to notify the pipeline as to whether the subscriber or person wishes to be included on the subscriber list for any of the oil pipeline's integrated pipeline systems.

(b) The oil pipeline must immediately add to the specified subscriber list any subscriber or person which responds in writing within 30 days of receipt of the oil pipeline request and which indicates in that response that it wishes to be included on the specified list.

[Order 312, 48 FR 29479, June 27, 1983]

§ 385.1403 Petitions seeking institution of rulemaking proceedings (Rule 1404).

Any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules, or regulations of general applicability and significance designed to implement or interpret

law, or to formulate general policy for future effect. No reply to such a petition may be filed. Whether a proceeding shall be instituted as requested is within the discretion of the Commission and the ruling on the petition will be final. In the event a rulemaking proceeding is instituted by the Commission, the procedure to be employed for the taking of evidence or the receipt of views and comments will be designated by Commission order.

[Order 276, at 49 FR 21705, May 23, 1984. Redesignated by Order 606, 64 FR 44405, Aug. 16, 1999]

Subpart O—Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

§ 385.1501 Scope (Rule 1501).

The rules in this subpart apply to and govern proceedings for the assessment of civil penalties pursuant to section 31 of the Federal Power Act, 16 U.S.C. 823b.

§ 385.1502 Persons subject to civil penalties (Rule 1502).

(a) Any licensee or permittee under the Federal Power Act, or exemptee from any requirement of Part I of the Federal Power Act, may be subject to civil penalties; and

(b) Any person who must have a license under, or exemption from, the Federal Power Act, but does not, may be subject to civil penalties.

§ 385.1503 Actions subjecting persons to civil penalties (Rule 1503).

(a) The actions that subject persons to civil penalties are violations of:

(1) Any rule or regulation issued under Part I of the Federal Power Act;

(2) Any term or condition of a license or permit issued under Part I of the Federal Power Act or an exemption issued from any provision of Part I of the Federal Power Act;

(3) Any compliance order issued under section 31(a) of the Federal Power Act; or

(4) Any requirement of Part I of the Federal Power Act.

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(b) Only actions occurring on or after October 16, 1986, may subject a person to civil penalties.

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to \$10,000 for each day that the violation continues.

(b) No civil penalty may be assessed where a license or exemption is ordered revoked.

§ 385.1505 Determination of proposed penalty amount (Rule 1505).

(a) In determining the amount of a proposed penalty, the Commission will consider the nature and seriousness of the violation, and the efforts of the licensee, exemptee, permittee or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(b) In making its determination under paragraph (a), the Commission will consider the following factors:

(1) Whether the person had actual knowledge of the violation;

(2) Whether the person had constructive knowledge of the violation deemed to be possessed by a reasonable individual acting under similar circumstances;

(3) Whether the person has a history of previous violations;

(4) Whether the violation caused loss of life or injury to persons;

(5) Whether economic benefits were derived because of the violation;

(6) Whether the violation caused damage to property or the environment;

(7) Whether the violation endangered persons, property or the environment;

(8) Whether there were timely remedial efforts;

(9) Whether there were untimely remedial efforts;

(10) Whether there were no remedial efforts; and

(11) Whether there are any other pertinent considerations.

§ 385.1506 Notice of proposed penalty (Rule 1506).

(a) Before issuing an order assessing a civil penalty under this subpart

against any person, the Commission will provide to the person notice of the proposed penalty.

(b) The notice of proposed penalty will:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3)(i) Inform the person of the opportunity to elect in writing within 30 days of receipt of the notice to have the procedures of Rule 1509 (in lieu of those of Rule 1508) apply with respect to the assessment, or,

(ii) If a final compliance order is issued under section 31(a) of the Federal Power Act, no notice of election will be provided for a violation of, or a failure or refusal to comply with, the final order.

§ 385.1507 Election of procedures and answer (Rule 1507).

(a) If the respondent receiving the notice of proposed penalty wishes to have the procedures of Rule 1509 apply, then the respondent must file with the Commission, within 30 days of receipt of the notice, a notification of the election in accordance with subpart T, part 385 of this chapter. The notification may include an answer setting forth factual or legal reasons why the proposed assessment order should not be issued, should be reduced in amount, or should otherwise be modified. If a person fails to file an answer within the 30-day time limit, all material facts stated in the Commission's notice will be deemed admitted.

(b) Any election to have the procedures of Rule 1509 apply may not be revoked after the 30-day election period in paragraph (a) of this section, without the consent of the Commission.

§ 385.1508 Commission administrative procedures (Rule 1508).

(a) If the respondent is not entitled to an election pursuant to Rule 1506(b)(3)(ii) or does not timely elect to have the procedures of Rule 1509 apply, the Commission will commence a proceeding in accordance with the provisions of subpart E of this chapter.

(b) The Commission's Rules of Practice and Procedure in part 385 of this